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AUTHOR McMahon, William G.
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ABSTRACT

Increasing numbers of special needs offenders reflect the proportionate growth of the general incarcerated population. Prevention should be aimed at working with local school districts to identify youth with learning problems who may eventually drop out of school. Many of the developmentally disabled and learning disabled persons who end up in the juvenile and criminal justice systems do not belong there. Alternatives to incarceration for the learning disabled, special housing for the developmentally disabled, and diversionary programs are the approaches which the justice and social service systems must cooperatively take. Advocacy on behalf of the individual and the systems that must cope with disabled offenders, as well as training and awareness for professionals, are also key elements in dealing with the problem. Two brief case histories are presented, and a training program for criminal justice and human service professionals containing the following elements is described: (1) sensitivity to the issues of the disabled offender; (2) education of specific groups in reference to their particular concerns regarding the disabled offender; (3) training of these groups in specific strategies for dealing with learning and developmentally disabled offenders. (JW)

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William G. McMahon
Chairman
New York State Commission of Correction
60 South Pearl Street
Albany, New York 12207

remarks
to the
ACLD International Conference

Learning Disabilities and Criminal Involvement:

Prevention, Advocacy and Training

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Good Morning. It is a pleasure to be here with you all today to discuss the issue of learning disabilities and the link to criminal involvement. I am especially pleased to be on this panel with representatives from other critical points of the justice system and from the human service system.

Each of us can tell of the difficulties we face when our respective systems encounter an individual who is not "typical" or requires our special attention. So you can imagine the magnitude of difficulties when we try to work between systems to help these special persons.

It is testimony to the joint progress the criminal justice and learning disabilities service systems are making that beside me are seated a medical doctor, an attorney, a special educator, a judge and an advocate -- sharing their experiences and achievements in

assisting individuals who are learning disabled that become involved with the law.

The fact that at least six seminars at this ACLD Conference are addressing the link between juvenile delinquency and learning disabilities is indicative of the fact that this issue is growing in size. Since the first comprehensive study, by Charles Murray for the National Institute for Juvenile Justice and Delinquency Prevention in 1976, we have become increasingly aware of the LD/JD link.

The sheer numbers of our incarcerated populations are growing. Thus, we can expect to find a growing number of handicapped and disabled individuals in our correctional facilities, proportionate with the general incarcerated population. And from my personal experiences, I have seen more and more special needs offenders over the last few years.

What you see, as the public, are the visible, high profile cases. These usually are the most severe. What I see, regularly and with increasing frequency, are the less severe cases. These are the borderline cases, that go unnoticed by the media. These are the majority of cases that are below the visible surface.

There is a danger with the large numbers of cases beneath the surface, a danger that these cases will rise up and explode, resulting in chaos and short-term, patchwork solutions.

That is why we must begin the necessary work to reduce this danger. We must begin by working to prevent these involvements with the criminal justice system. Prevention must be aimed at high-risk youths. I, for one, believe that this is possible through working with local school districts to identify those youth who find learning difficult and extremely frustrating. What often results in this frustration is truancy and dropping out of school entirely.

I strongly believe that education is one vehicle that can be instrumental in preventing criminal involvement of learning disabled youth. However, we must reevaluate our educational policies that stigmatize and force frustration on those who are learning disabled.

In reading the magazine Their World, published by FCLD, I found a quote that says it all:

"If children can not learn the way we teach, we must teach in a way they can learn."

Many of the developmentally disabled and learning disabled persons that end up in the juvenile and criminal justice systems do not belong there. They do not belong there for a variety of reasons:

Many of these youths are needlessly brought into the system because they were not linked to services prior to their involvement; others could have been diverted at the early stages of involvement,

with police or the family courts, had their families been given assistance in providing advocacy and information related to their case; still others could have been diverted at their initial encounter, if there were pretrial services available;

Others end up incarcerated simply because jail is the only placement available.

However until we reach the point when we can prevent these youths and adults from entering the system, there must be a stronger commitment by the criminal and juvenile systems for meeting their needs while incarcerated. This includes taking responsibility for providing educational, vocational and habilitative services. We must work toward providing advocacy and training for the learning disabled individuals who do become involved with the justice system.

And while my concern is great for these special needs offenders, I believe that more effective methods must be addressed for

serving those offenders that who require court supervision. Alternatives to incarceration for the learning disabled, special housing for the developmentally disabled and physically handicapped and diversionary programs for these individuals are the key.

For this to succeed, to best serve these individuals, will require the ultimate cooperation between the entire justice system and the service systems for the learning disabled and developmentally disabled.

We need to jointly announce our commitment to proper care, to prevention, to diversion and to alternative placements. We need to train all aspects of our systems to be sensitive, understanding and knowledgeable about being disabled and caught up in the criminal justice system.

I have been a witness to a number of cases recently which testify to the points I have just made. Let me share two of them, in particular.

David is nineteen years old and was diagnosed as learning disabled when he was very young. Despite his learning disability, David's parents, under the belief that they were doing what was best for their son, sheltered him from participating in programs and services which would help him cope with his disability. They were afraid of the stigma attached to the labelling of their son.

Whenever David got into trouble, or could not perform well, David's parents denied any responsibility and would not let David himself be held responsible for what happened. They would blame whatever it was, on his disability. As a result, neither David nor his parents learned to cope, or accept, his learning disability. Therefore when David was in trouble with the law, it was not his fault or their responsibility. Everyone and anyone else was to blame.

David has since been arrested, convicted and is currently incarcerated in a state correctional facility. Without trivializing his case, I have seen, in this instance, the serious need for advocacy on behalf of David, his parents and the other young men and women with learning disabilities and other handicapping conditions.

Where is the true failure with David? Is it David or his parents? Is it the service agencies or the local education agencies? Is it the police, or the judge, or corrections?

While therein lies no real answer to the question of blame, there is the answer to the question of responsibility. I am referring to mutual responsibility, shared responsibility. I am talking about joint ownership of a problem that affects us all.

The need for advocacy runs on interrelated lines of helping the individual cope with the specific situation and helping systems cope with the growing problem of disabled offenders.

From the individual point of view, we have the shared responsibility for helping the disabled individual comprehend the events surrounding him. As confused and fragmented as the criminal justice system is reported to be, anyone entering it knows full well when they've been through it. It ought to be taken upon ourselves to explain the circumstances and the process.

As much as for the offender, we need to help parents, friends and relatives understand and accept the certainty of some events. For David's parents, they just refused to accept their son's disability. They refused to accept help. And when David was arrested, they certainly did not understand what was happening to their son, let alone what they could do to help.

The service sector should assist individuals in coping with their own, or a family member's, disability. The justice system should assist individuals or relatives in understanding its process. Then, both systems can begin working together to A) prevent

unnecessary encounters with the law and B) in the event of involvement, provide mechanisms for coping with the situation and alternative strategies for handling these individuals.

In David's case, we alerted different administrators and staff in state correctional facilities about David's conditions before he arrived at a new location. While this is done routinely, we were reinforcing this knowledge. We are genuinely concerned about David.

Another case I have recently been involved with has surrounded a 32 year old man, who, although not specifically learning disabled, is a tragic example of the failure of our systems to communicate.

Gerald is mentally retarded and has cerebral palsy. He has been institutionalized in various residential facilities since he was eleven years old. Although he has not yet been convicted, Gerald has been incarcerated pretrial, for almost one year in a local jail.

Numerous times he has been involved with the law. Each time he was found, by different psychologists and psychiatrists, to be incapacitated and not competent to stand trial, unable to aid in his own defense, or understand the consequences of his own behavior.

It has been clearly documented by professionals who are familiar with his condition, that Gerald requires continual treatment and supervision. Not continual supervision by correctional administrators, but by counselors and special education practitioners. Yet, because of Gerald's involvement with the law, a residential facility has not been located that will accept him. Therefore, he remains for yet another day, another week, incarcerated.

For all practical purposes, this individual, in the care and custody of New York State since he was eleven, is a child -- a product -- of the State. Yet, as parents to this child -- creators of this product -- we have failed.

The criminal justice system did little more than to process Gerald within their legal responsibilities, remanding him to the custody of the mental hygiene system. This system, within their legal responsibility, did little more than provide Gerald with a place to live until they could change his custody status from criminal to civil, thus opening the door for Gerald to leave -- which he did, time and time again.

What then is "responsibility"? If both systems are acting within their legal authority, why then does Gerald continue to pass in and out of our facilities, a half dozen times to date?

I can tell you this: County correctional facilities in New York State currently have little experience, little knowledge and expertise in caring for the special needs of disabled offenders in their custody. While some jails have taken their own initiative on this, and the Commission of Correction's Developmental Disabilities Unit offers ongoing technical support to some sheriffs, there is not

an abundance of resources and services known to the correctional administrators in many of the counties. There is not an abundance of programming money, of space, or of staff to address these problems.

The current lack of widespread knowledge on the part of police, judges, attorneys, special educators, parents, disability specialists, correctional administrators and other involved professionals compounds many of these encounters with the law. Training of these professionals is a must if we are to facilitate the elimination of tragic cases such as Gerald.

If a chief jailer, a sheriff, or a warden can better understand the medical, psychological and physical constraints of the developmentally disabled or learning disabled offender...

-- If a special education teacher, a rehabilitation counselor or a developmental psychiatrist can understand the security and safety

concerns of the learning disabled or developmentally disabled offender...

-- If much of the misinformation and the lack of information regarding the learning disabled and developmentally disabled is reduced, then perhaps the fear associated with providing services for these individuals will be reduced, clearing the way for cooperation and coordination among our systems.

I have shared these two cases with you to color your understanding of the issues we are here to address today. I would like to leave you with a positive thought. The thought that, along with the attorney and the judge, I represent one step further in closing the gaps that currently exist between the bureaucracies in and around this state.

The Commission of Correction and the Foundation for Children with Learning Disabilities are developing a three-fold training

program for criminal justice and human service professionals. The program's approach is as follows:

ONE) Sensitivity to the issues of the disabled offender. This component aims itself at everybody -- professionals, parents, the disabled, the general public and legislators.

TWO) Education of specific groups to their particular concerns regarding the disabled offender. For example, teaching parents and teachers about the criminal justice process, or teaching corrections officers about learning disabilities.

and THREE) Training of these groups for specific strategies in dealing with learning disabled and developmentally disabled offenders. Training to provide the very important and very necessary special services to these individuals.

The Foundation has a proven record of working to a tangible and solid product. We are eager to pursue this venture with them.

In addition, we have begun laying the foundation for providing special educational and vocational programs in local jails. The Commission is very actively pursuing legislation that will secure educational services for youth in county jails. It is our intention that with this initial piece in place, we can better facilitate special educational testing and teaching to youth within these facilities.

With our growing acceptance of the facts relating to learning disabilities and juvenile delinquency, our joint effort with FCLD and the support of legislation, we can take the next step to preventing unnecessary contacts these young people have with our justice system. We can start drawing the other players into the

picture to work as a coordinated unit to prevent and effectively care for the learning disabled offender.

I look forward to building and strengthening the contacts with all of you, as concerned parents, professionals and citizens. This seminar, this conference can be the fertile ground for such growth.

Thank you for allowing me to be here and I welcome your feedback.

APPENDIX

PROBLEM/NEEDS ASSESSMENT

The problems of developmentally disabled (DD) offenders have become the subject of increased concern in New York State. Because these offenders require a higher level of supervision, as well as programs and services that are not currently available in most parts of New York's criminal justice system, "developmentally disabled persons are placed at a distinct disadvantage upon arrest." (New York State Criminal Justice Task Force on Developmental Disabilities, 1985)

A. Definition

1. Developmental Disability

The federal definition of a developmental disability is defined as "a severe, chronic disability of a person which --

"(A) is attributable to a mental or physical impairment or combination of mental or physical impairments;

"(B) is manifested before the person attains age twenty-two;

"(C) is likely to continue indefinitely;

"(D) results in the substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

"(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

The category of developmental disability includes mental retardation, cerebral palsy, autism, epilepsy, and neurological impairments (Public Law 98-527).

2. Learning Disability

The federal definition of a learning disability is defined as follows:

"Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain destruction, dyslexia and developmental aphasia. The term does not include children who have learning problems that are primarily

the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage (Public Law 94-142)."

For the purpose of this project, the term developmental disability will include both the DD and the LD definition.

B. Prevalence

Although a statewide prevalence figure does not exist for New York, several studies have been conducted to document the number of DD individuals who are in the criminal justice system.

* Nationally, the number of mentally retarded persons in prisons and jails has been estimated between five and thirty percent (Brown & Courtless, 1971);

* In New York State prisons, with a population of over 36,000 inmates, approximately 2 1/2 percent, or 782, are mentally retarded (New York State Department of Correctional Services, 1986);

* In the Erie County Holding Center, of 808 inmates screened, 13.8 percent, or 112, were identified as DD (SUNY College at Buffalo, Exceptional Education Department, 1986);

* In the Onondaga County Probation Screening Project, of the approximately 500 county inmates screened, 24 percent, or 120, were identified as DD (Onondaga County Probation Department, 1986);

* It is estimated that four percent of the prison population has epilepsy (Mid-Hudson Epilepsy Association, 1985);

* Of the approximately 2,000 youth detained in State Division for Youth facilities, 40 percent, or 800 youth, have been found to be educationally handicapped -- most of them being classified as emotionally disturbed, mentally retarded, or learning disabled.(New York State Division for Youth, 1986).

C. The Disadvantaged Position of Developmentally Disabled Offenders

Research has documented the many problems that are encountered when DD offenders enter the criminal justice system. When compared to non-DD offenders, these offenders are:

--More likely to be caught (Santamour, 1977);

--More likely to confess (Sales, 1982);

--More likely to be convicted (DeSilva, 1980);

--More easily manipulated and victimized in a prison environment (Deemer, 1983);

--More likely to receive a prison sentence and serve a longer term (Kurtz & Lomastro, 1975 and Santamour, 1986); and

--Less likely to receive probation or to be paroled (Santamour, 1986).

D. The Need for Training

Although an increased number of DD offenders has placed greater responsibility on criminal justice practitioners, resources have been virtually nonexistent to provide important knowledge and training to those professionals who must interact with DD offenders. It has been shown that the attitudes of criminal justice professionals will determine, to a great extent, how a person who is developmentally disabled is handled once brought into the system (Santamour, 1982). Consider the following related to the need for training:

* Law enforcement officers encounter problems due to a lack of adequate training regarding developmental disabilities. Incarceration was frequently cited by law enforcement officers as the only realistic option available to them for the problematic and ambiguous situations DD offenders present. (New York University, 1986).

* In a 1982 study, it was found that attorneys will often recognize that their client has a problem but they cite heavy caseloads, the lack of training regarding laws dealing with the handicapped and the lack of knowledge regarding the nature and levels of handicapping conditions as obstacles in providing adequate representation for retarded offenders (Revenel, 1982).

* In a 1979 study, 90 percent of judges sampled indicated that they had not received any training regarding mental retardation and a majority of those sampled displayed confusion regarding the difference between mental retardation and mental illness. (Schilit, 1979).

* Is has been found that the lack of knowledge and training by correction officers results in their misrepresentation of a DD offender's behavior as "inappropriate" (Phyfer, 1982). This misrepresentation often results in DD persons being cited more frequently for violations of prison rules (Santamour, 1986).

F. Special Needs Youth In the Justice System

In 1984-85, seven regional forums sponsored by Lawrence T. Kurlander, State Director of Criminal Justice, and the New York State Developmental Disabilities planning Council were held across New York State to address the special needs of youth in the criminal justice

system. The participants of the forums, representatives of private and public, human service and criminal justice agencies, identified the following main issues:

* There is a lack of understanding by agencies providing services to people with developmental disabilities, schools and other providers regarding the criminal justice system and vice versa;

* There is a need for the establishment of linkages between state/local jurisdictions;

* There is a need for networking at local and state levels;

* There is a need for training programs for direct case staff in treatment and problematic techniques;

* There is a need to initiate community education programs with greater emphasis on public relations advocating for successful programs as alternatives; and

* There is a need for statewide clearinghouse system (Special Needs Youth in the Justice System, 1985).

OBJECTIVES

A. Phase I: Sensitivity

1. At the conclusion of the sensitivity component, criminal justice professionals, including law enforcement officers, attorneys, judges, probation officers, parole officers and correction officers in the three demonstration sites regions will demonstrate an increase in their awareness of the issues regarding DD offenders and undetected LD deviant behaviors.

2. At the conclusion of the sensitivity component, human service professionals, including representatives from developmental disabilities, learning disabilities and advocate, parent and volunteer organizations in the three demonstration sites will demonstrate an increase in their awareness of the issues regarding DD offenders and undetected LD deviant behaviors.

B. Phase II: Education

1. At the conclusion of the education component, criminal justice professionals will demonstrate an increase in their knowledge of the conditions and characteristics of DD offenders and the organization and operation of the human service system.

2. At the conclusion of the education component, human service professionals will demonstrate an increase in their knowledge of the conditions and characteristics of DD offenders and the organization and operation of the criminal justice system.

C. Phase III: Management Training

At the conclusion of the management training component, the following results will be achieved:

1. To increase the number of identifications of DD individuals involved or "at-risk" of being involved with the criminal justice system by both criminal justice and human service professionals.

2. To increase the number contacts between criminal justice and human service professionals regarding DD offenders.

3. To develop a statewide resource manual of criminal justice and human service professionals, agencies and organizations having contact with DD persons in each region of New York.